

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-219852; B-219957 **DATE:** October 30, 1985

MATTER OF: American Contract Services, Inc.

DIGEST:

Protest challenging specification obligating contractor for certain portion of repair costs of government equipment is denied where protester fails to show that requirement, imposed in procurement for audiovisual services, is unreasonable. The mere presence of risk in a solicitation does not render it inappropriate.

American Contract Services, Inc., protests provisions in invitations for bids (IFB) Nos. F07603-85-B0013 and F41685-85-B0011, issued by Dover Air Force Base, Delaware, and Laughlin Air Force Base, Texas, respectively, for audiovisual services. American challenges requirements that contractors repair government audiovisual equipment under fixed-price contracts, implying that they unduly restrict competition. We deny the protest.

The solicitations are based upon a standard performance work statement used throughout the Air Force in the procurement of audiovisual services. Among these services are graphic arts support, photographic services and products, audiovisual library services that involve the issuance of media projection and audio equipment to authorized users, and maintenance, including repair, of all the audiovisual equipment listed in the solicitation. With regard to this last task, the solicitations provide that the contractor must make all necessary repairs costing less than a specified percentage of the purchase price of each individual piece of equipment. (The IFB issued by Dover AFB specified a repair cost limit of 40 percent of the cost of each item, while the one issued by Laughlin AFB specified 75 percent.) To assist bidders in calculating their prices, the solicitations listed equipment to be maintained, along with costs incurred for repair during 1984. Both Air Force bases permitted bidders to view the equipment and made available additional information pertaining to its age and condition.

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American contends that the requirement for repair is unfair because bidders must include in their bid prices an amount that cannot be known in advance.^{1/} American argues that bidders therefore must speculate on the likelihood that each piece of equipment will break down, estimate the cost of repairs, and then use this information to calculate their bids. American proposes two alternative approaches: the first effectively would provide the contractor with a guaranteed amount for all repairs (rather than on a per item basis) and would reimburse the contractor for any costs in excess of this amount; the second would reimburse the contractor for the actual cost of all previously-approved repairs. In short, under either alternative, American seeks to make repairs a reimbursable cost, rather than to provide the services at a fixed price.

The determination of the needs of the government and the best method for accommodating such needs are primarily the responsibility of the contracting agency. This is because the agency is familiar with the conditions under which supplies, equipment, or services have been used in the past and how they are to be used in the future. Therefore, the agency is generally in the best position to know the government's actual needs and is best able to draft appropriate specifications. Consequently, we will not substitute our judgment for that of the contracting agency absent a showing that the agency's determination was not reasonable. See Saxon Corp., B-214977, Aug. 21, 1984, 84-2 CPD ¶ 205.

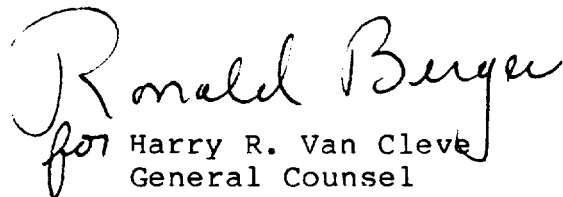
Here, American has not shown that the requirement for the contractor to assume a specified percentage of repair costs is unreasonable. American apparently seeks to eliminate any possible risk to the contractor in repairing the audiovisual equipment, shifting that risk to the

^{1/} Initially, American also challenged a provision in the solicitation issued by Dover AFB that would have made the contractor responsible for a portion of the repair costs of each piece of equipment "each time that piece of equipment was repaired." As a result of this requirement, American argued, the contractor's liability could exceed the value of the equipment in those instances where an item requires numerous repairs. In its administrative report, the Air Force agrees with the protester, and it has amended the solicitation to delete the protested provision. Consequently, it is unnecessary for us to consider this basis of protest further.

agency. The presence of risk to the contractor, however, does not make the solicitation inappropriate. Some risk is inherent in most types of contracts, and bidders are expected, when computing their bids, to account for such risk. The provision contested here affects all bidders equally and the fact that they may respond differently in calculating their prices is a matter of business judgment and does not preclude a fair competition. See Edward E. Davis Contracting, Inc., B-211866, Nov. 8, 1983, 83-2 CPD ¶ 541. Moreover, as the Air Force points out in its report, the contractor here will have some control over the incidence of repair through preventive maintenance and, in many cases, proper operation of the equipment.

Finally, we note that five firms submitted bids on the IFB issued by Laughlin AFB, and three have indicated they will bid on the one issued by Dover AFB, for which bid opening has been postponed due to the protest. These firms were evidently able to calculate their bids despite the risks perceived by American, which did not bid on the first solicitation and seeks amendment of the second. Such competition is strong evidence that the requirement imposed by the Air Force is neither unreasonable nor unduly restrictive. See Memorex Corp., B-212660, Feb. 7, 1984, 84-1 CPD ¶ 153.

The protest is denied.


for Harry R. Van Cleave
General Counsel